

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 51 OF 1997

Shri Mahadeo Pandurang Phadtare)
Age: 38 years, Resident of Phaltan)
District: Satara.)....Applicant.

V/s

The State of Maharashtra)....Respondent.

Mr Ranjit R. Bhonsale for the applicant.

Mr. S.V. More, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 18th August, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant is challenging the judgment and order passed by the Additional Sessions Judge, Raigad in Criminal Appeal No. 30 of 1993 whereby the Sessions Judge was pleased to convict the accused for the offence punishable under section 304-A and sentence him to suffer simple imprisonment for

one year and six months and to pay fine of Rs 3000/- and, in default, to further undergo simple imprisonment for one month. The accused was also convicted for the offence punishable under section 338 of the Indian Penal Code and sentenced to suffer simple imprisonment for one month and to pay a fine of Rs 500/- and, in default, to further undergo simple imprisonment for 15 days. He was also convicted under sections 427 of the Indian Penal Code and 184 of the Motor Vehicles Act and sentenced to suffer simple imprisonment for one month. The Additional Sessions Judge has partly allowed the appeal of the applicant. However, he has confirmed the findings recorded by the trial court and the sentence was altered from two years to one and half years. Being aggrieved by the aforesaid orders, the applicant has filed this Criminal Revision Application.

3. Brief facts which are relevant for the purpose of deciding the present Criminal Revision Application are as under :-

4. Applicant was employed with the State Transport

Corporation and he was driving a Bus which proceeded from Kolhapur to Alibag. After taking a brief halt at Lonavala, the Bus reached Borghat at about 3.50 p.m where the applicant lost his control over the bus and, as a result, the Bus fell into the valley and 39 passengers lost their lives and 30 passengers were seriously injured. Applicant, however, survived and the FIR was lodged on 19/10/1990 and he was arrested on the next date. The charge-sheet was filed and the J.M.F.C., Khalapur, convicted the applicant and sentenced him to suffer simple imprisonment for two years and also sentenced him under other provisions of the Indian Penal Code & Motor Vehicles Act. Against this order, applicant-accused preferred an appeal before the Additional Sessions Judge. The learned Additional Sessions Judge confirmed the finding of the trial court. Sentence, however, was reduced from two years to one and half years.

5. The learned Counsel appearing on behalf of applicant vehemently urged that both the lower Courts had not taken into consideration the fact that the accident had taken place not as a result of negligence or rash driving of the applicant

but on account of failure of brakes, which had resulted in the applicant losing control over the vehicle. He submitted that both the lower Courts had given a finding regarding speed of the vehicle and had erred in not accepting defence of the accused about failure of brakes. He further submitted that both the Courts below had erred in coming to the conclusion that the Bus in question was Ashok Leyland Bus and was registered in 1990 which had a mechanism whereby possibility of failure of brakes was eliminated. He submitted that this finding was belied by the statement of one of the witnesses who had clearly stated that the Bus in question was a Tata Bus and not Ashok Leyland Bus. He further submitted that from the evidence on record, it was a clear case of accident due to mechanical failure of brakes and the applicant could not be held responsible either for rash or negligent driving. He invited my attention to the findings which were recorded by the trial court and the appellate court and urged that these findings were not supported by the evidence on record. He further submitted that the accident had taken place in 1990 and that the applicant was already removed from service and, therefore, this is a fit

case for reducing the sentence.

6. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicant. The scope of power of this Court while exercising its jurisdiction under section 397(1) of the Criminal Procedure Code is very limited. This Court cannot reappreciate the evidence as is done in regular appeal and, this court, at the most, can consider legality of the order which is passed by both the Courts below. The evidence on record clearly indicates that the applicant was driving a vehicle in a rash and negligent manner. Both the Courts below have given cogent reasons while arriving at the above conclusion. There is a concurrent finding of fact which is recorded by both the Courts below and it is not possible to interfere with the said finding.

7. Both the Courts have not accepted the theory of failure of brakes for more than one reason. Further, the lower Courts have also observed that even if the theory of failure of brakes is accepted, it was open for the applicant to have taken a vehicle to the right side and away from the valley

which could have saved lives of 39 passengers. Though the fact that 39 passengers had died, by itself would not be a ground to come to the conclusion that the applicant was driving the Bus in rash and negligent manner, the finding on record and the statements of witnesses itself clearly establish this fact. A driver of Public/State Transport Vehicle is supposed to take extra care and caution while driving such a vehicle which carries passengers from one place to another. The degree of responsibility and care which is to be exercised by a driver of the Public/State Transport Vehicle is enhanced when we consider the fact that the State of Maharashtra virtually has a State monopoly in respect of transport of its passengers. The incident in question took place in a Ghat Section and it was the duty of driver to have ensured that the vehicle is in a fit condition. The inspection point of the vehicle was two kilometers away from the beginning of the Ghat. It is inconceivable that this defect would not have been noticed by the mechanics if the vehicle had been shown by the driver. The submission of the learned Counsel for the applicant, therefore, cannot be accepted. In my view, there is no reason to interfere with

the concurrent finding of fact which is recorded by both the Courts below.

8. It must be noted here that the sentence for rash and negligent driving is only two years. It would be appropriate for the Government to consider increasing maximum sentence for the purpose of offence of rash and negligent driving under section 304-A of the Indian Penal Code particularly when it has been noticed that the number of people who die on the roads in India is more than people who die during any epidemic. I hope and trust that Government considers this aspect about the sentence which is to be awarded in cases where rash and negligent driving is established.

9. In these circumstances, Criminal Revision Application is dismissed. Rule stands discharged. At this stage, the learned Counsel appearing for the applicant seeks eight weeks time to surrender. Eight weeks time is granted to the applicant to surrender.

(V.M. KANADE, J.)